

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2022] NZERA 491
3119080

BETWEEN AMIT KUMAR
 Applicant

AND HOSPITALITY SERVICES
 LIMITED
 Respondent

Member of Authority: Geoff O’Sullivan

Representatives: Phillip Drummond, counsel for the Applicant
 Andrew Scott-Howman, counsel for the Respondent

Submissions Received: 12 September 2022 from the Applicant
 29 August 2022 from the Respondent

Date of Determination: 28 September 2022

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 18 August 2022 I issued a determination concluding Mr Kumar had personal grievances in that he had been disadvantaged and had been unjustifiably dismissed.¹ The costs were reserved.

[2] Prior to this, on 17 November 2021, Member MacKinnon issued a determination on two preliminary issues namely:

- (a) What was the contractual notice period?
- (b) Had the applicant raised his personal grievance within 90 days?

¹ [2022] NZERA 398.

[3] Member MacKinnon found in favour of the respondent in respect of the contractual notice issue and in favour of the applicant in respect of the 90-day issue. Her determination was done on the papers after each of the parties filed submissions on the matter. Costs were reserved.

[4] The parties have been unable to resolve the issue of costs and Mr Kumar now seeks costs, first in respect of Member MacKinnon's preliminary determination, and secondly in respect of my substantive determination.

Parties' submissions

[5] The respondent accepts costs follow the event but says that in respect of the preliminary determination, Member MacKinnon found in favour of the applicant on one issue and in favour of the respondent on the other, and therefore submits that costs should lie where they fall.

[6] In respect of my substantive determination, the respondent submits that costs based on the normal daily tariff of \$4,500 for an investigation's first day should apply.

[7] The applicant submits that as the successful party he should be awarded costs for the substantive hearing of \$4,500. In respect of the preliminary determination, he submits he should receive an award of costs representing a half day at the second daily rate of \$3,500, or \$1,750. The applicant therefore is requesting a total cost award in the sum of \$6,250.

[8] The applicant also claimed disbursements of \$406.60. The claim for disbursements is made up by the filing fee of \$71.56, photocopying of various documents \$47.44, \$257.60 paid to a contract typist for typing a synopsis of argument and courier costs of \$30 incurred in sending documents to the ERA and the respondent.

[9] The two arguments dealt with by the Authority in its preliminary determination were straightforward and if the matter had been heard other than on the papers, it would likely to have occupied no more than two hours of time.

[10] The substantive investigation meeting finished at approximately 3 o'clock in the afternoon of the first day. Accordingly, the preliminary issue and the substantive issue together occupied one day. Therefore I consider an appropriate award in respect of costs is \$4,500 being the usual daily tariff.

[11] In respect of disbursements claimed, I consider the photocopying disbursements and contract typist fees in this case are a cost that should be borne by the applicant being part of the normal preparation covered by the daily tariff. The applicant however is entitled to be reimbursed for the filing fee and courier fees.

Conclusion and orders

[12] For the above reasons I order Hospitality Services Limited to pay Amit Kumar the following:

- (a) \$4,500 as a contribution towards the costs he incurred in pursuing his claim;
- (b) Disbursements of \$101.56.

Geoff O'Sullivan
Member of the Employment Relations Authority